HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, April 27, 2015
84th Legislature, Number 57
The House convenes at 10 a.m.
Part Two

Nineteen bills and two joint resolutions are on the daily calendar for second-reading consideration today. The bills analyzed in Part Two of today's *Daily Floor Report* are listed on the following page.

Alma Allen
Chairman
84(R) - 57

HOUSE RESEARCH ORGANIZATION

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Monday, April 27, 2015

84th Legislature, Number 57

Part 2

SUBJECT: Creating a single online application for state jobs

COMMITTEE: Government Transparency and Operation — committee substitute recommended

VOTE: 7 ayes — Elkins, Walle, Galindo, Gonzales, Gutierrez, Leach, Scott Turner

0 nays

WITNESSES: For — Paul D'Arcy, Indeed; Harrison Hiner, Texas State Employees Union; Joey Lozano

Against — None

On — Laurie Biscoe, Texas Workforce Commission; (*Registered, but did not testify*: Scott Eychner, Texas Workforce Commission)

BACKGROUND: Government Code, sec. 656.001 requires state agencies to list notice of employment openings with the Texas Workforce Commission.

DIGEST: CSHB 426 would direct the Texas Workforce Commission to create a single online application through which applicants could apply for jobs at any state agency.

The Workforce Commission would be required to establish a common format for the job application and ensure that applicants could submit the online application and that agencies could receive it.

State agencies would be required to accept applications submitted through the online process, although they also could continue accepting job applications submitted in another fashion.

The bill would not apply to state institutions of higher education and university systems.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 426 is a common sense measure that would simplify the process of applying for jobs at state agencies. Agencies already are required to list job openings with the Texas Workforce Commission, which posts them on its website, WorkinTexas.org. However, agencies are not required to accept applications completed through the website, and many prefer to use their own application processes. This bill would allow agencies to continue using their own applications, but it would improve the commission's online application process and require agencies to accept applications submitted through Work in Texas.

The current requirement to submit different applications at each state agency is burdensome for applicants, particularly because the application process for state jobs is already time-consuming. In particular, applicants for positions at more than one agency repeatedly must provide their entire work histories, information that is used in each agency's hiring process. Workers with high-demand skills may not want to spend the time and effort needed to submit multiple applications to different state agencies.

By making it easier to apply for multiple jobs at once, the bill would help assemble a better pool of candidates from which agencies could select. With stiff competition for talent among employers in the private sector, the state must do whatever it can to ensure that agencies can attract talented and dedicated workers.

OPPONENTS SAY:

CSHB 426 would require state agencies to accept online job applications through the Texas Workforce Commission without taking steps to address deficiencies in the current online application process. For example, WorkinTexas.org lacks adequate filtering systems to ensure that applicants are qualified for the positions they seek. This can result in a flood of applications from less qualified candidates reaching hiring managers, who have difficulty discerning the truly qualified candidates who might be hiding in the pool. This has led many hiring managers to place greater emphasis on applications submitted directly to the agency, and it is unlikely that CSHB 426 would change this dynamic. The bill also could require integration efforts on the part of agencies in order to accept applications from WorkinTexas.org, including translating entries from the Workforce Commission's database to the individual agencies' databases.

SUBJECT: Expanding the use of graywater and alternative onsite water

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Keffer, Ashby, D. Bonnen, Burns, Frank, Kacal, T. King, Larson, Lucio, Nevárez

0 nays

1 absent — Workman

WITNESSES: For — Adam Smith, City of Austin; (*Registered, but did not testify*: Christy Muse, Hill Country Alliance; Cyrus Reed, Lone Star Chapter Sierra Club; Myron Hess, National Wildlife Federation; C.E. Williams, Panhandle Groundwater Conservation District; Ned Munoz, Texas Association of Builders; Julie Nahrgang, Texas Association of Clean Water Agencies and Water Environment Association of Texas; Neftali Partida, Texas Building Owners and Managers Association; David Weinberg, Texas League of Conservation Voters; Frank Aguirre, Texas Septic Systems Council; David Lancaster, Texas Society of Architects; Dean Robbins, Texas Water Conservation Association.; Carole Baker, Texas Water Foundation; Perry Fowler, Texas Water Infrastructure Network; Liana Kallivoka, U.S. Green Building Council; George Cofer)

Against — None

On — (*Registered, but did not testify*: David Galindo, Texas Commission on Environmental Quality)

BACKGROUND: Health and Safety Code, sec. 341.039, governs standards for the use and reuse of graywater. It defines "graywater" as wastewater from clothes-washing machines, showers, bathtubs, hand-washing lavatories, and sinks that are not used for disposal of hazardous or toxic ingredients. Graywater does not include wastewater from sinks used for food preparation or disposal, wastewater that has come in contact with toilet waste, or wastewater from the washing of material, including diapers, that has been soiled with human waste.

Sec. 341.039 also establishes the circumstances under which domestic use of less than 400 gallons per day of graywater is allowed by the Texas Commission on Environmental Quality (TCEQ) without a permit. Allowable use includes graywater from a private residence used onsite by the occupants for gardening, composting, or landscaping. Graywater must be stored in tanks and conducted in separate pipes that are clearly labeled as containing nonpotable water. It must be collected using a system that overflows into a sewage collection or on-site wastewater treatment and disposal system.

Water Code, sec. 26.0311 establishes standards for control of graywater based on those contained in Health and Safety Code, sec. 341.039. Both codes require TCEQ, by rule, to adopt and implement minimum standards for the domestic use of graywater, which appear in 30 TAC, Part 1, ch. 210, subch. F.

DIGEST:

CSHB 1902 would amend Health and Safety Code, sec. 341.039 to include standards for alternative onsite water, as well as graywater. The bill would define alternative onsite water to include rainwater, air-conditioner condensate, foundation drain water, storm water, cooling tower blowdown, swimming pool backwash and drain water, reverse osmosis reject water, or any other source of water considered appropriate by the Texas Commission on Environmental Quality (TCEQ).

The bill also would change the conditions for residential use of graywater or alternative onsite water without a permit to allow indoor use of graywater for toilet or urinal flushing. It also would require a collection system that could be diverted into, rather than overflowing into, an on-site wastewater treatment and disposal system. CSHB 1902 would modify the requirement in current law for the storage of graywater or alternative onsite water in tanks. Under the bill, graywater would be stored in surge tanks if required by TCEQ rule.

The bill would require the TCEQ to adopt and implement minimum standards, by rule, for the indoor and outdoor use and reuse of treated graywater and alternative onsite water, including use for toilet and urinal flushing. These rules would be required to assure that the use of alternative onsite water and graywater did not threaten human health and

would preserve current requirements that guard against graywater creating a nuisance or damaging the quality of groundwater or surface water.

CSHB 1902 would allow TCEQ, by rule, to annually inspect and test a graywater or alternative onsite water system. TCEQ would have to develop a public regulatory guidance manual to explain rules associated with graywater and alternative onsite water.

The bill would make conforming changes to Water Code, sec. 26.0311, including the requirement for the adoption of minimum standards under that section. TCEQ would have to adopt the rules required by CSHB 1902 by January 1, 2017.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1902 would promote the use of graywater and alternative onsite water as viable, sustainable resources. The development, management, and preservation of water resources throughout Texas has become a major priority as the state faces a prolonged drought. With its limited water resources, it is critical that Texas recognize graywater and other alternative onsite water sources as a desirable and sustainable water resource.

Graywater is a relatively clean form of wastewater from baths, washing machines, and other kitchen appliances. Current law and regulations allow graywater use for a few outdoor purposes, such as irrigation and watering to reduce foundation cracking. Graywater is contained within a separate plumbing system to ensure that the public water supply is not contaminated. These requirements in law and rule on the use of graywater were established more than 10 years ago. Since then, the invention of new technologies and systems has expanded the possibilities for safe onsite reuse of graywater on commercial, industrial, and domestic properties.

CSHB 1902 would bring current law and regulations up to date by expanding the sources of usable non-potable water to include alternative on-site water, such as air conditioning condensate, rainwater, storm water,

and foundation drain water. The bill would further the use of graywater and alternative onsite water by allowing the indoor use of graywater for toilet and urinal flushing and by no longer requiring its storage in a tank for every system. This can be costly and not always necessary, especially for smaller residential systems. Under CSHB 1902, any requirement for a storage tank would appear in rule, at TCEQ's discretion.

The use of graywater indoors, such as in toilets, would not pose a risk to public health. A cross-connection safeguard would be used to protect the public water supply from potential contamination due to backflow. The bill would provide further protections by requiring TCEQ to adopt minimum standards and rules and would allow for annual inspections and testing for graywater and alternative onsite water systems. While these systems can be costly to install, programs are available to assist homeowners and businesses with the expense. For example, the Property Assessed Clean Energy (PACE) program allows homeowners and businesses to finance the installation of a graywater or alternative onsite water supply system using property assessments on their buildings as a repayment mechanism.

OPPONENTS SAY:

Although Texas needs to consider every resource that might help to conserve the public water supply, the use of graywater and alternative onsite water could pose a risk to public health. Currently, graywater can be used for only limited outdoor use. CSHB 1902 would allow indoor use for graywater and many additional sources of non-potable water. While the allowable use would be limited to flushing toilets and urinals, any indoor use would significantly increase the potential for human contact, requiring a great deal of regulation to assure that there would not be any threat to human health.

Because of the requirement for a separate plumbing system and other costly equipment, graywater systems can be prohibitively expensive, especially for homeowners. While CSHB 1902 could remove one of the cost barriers by allowing TCEQ to determine by rule whether a storage tank was necessary, another significant cost factor could come from treating water to a bacterial level that would be safe for indoor use.

SUBJECT: Requiring generally accepted appraisal practices in certain appeals

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Parker, Springer, C. Turner, Wray

0 nays

WITNESSES: For — James Popp, Popp Hutcheson; Daniel Gonzalez, Texas Association of Realtors; (*Registered, but did not testify*: Seth Mitchell, Bexar County Commissioners Court; Jim Allison, County Judges and Commissioners Association of Texas; Charles Reed, Dallas County; Donna Warndof, Harris County; Roland Altinger, Harris County Appraisal District; Todd Stewart, Harris County Appraisal District; Annie Spilman, National Federation of Independent Business; James LeBas, Texas Apartment Association, Texas Oil and Gas Association; Richard Bennett, Texas Association of Manufacturers; Ken Nolan, Texas Association of Appraisal Districts; Ned Munoz, Texas Association of Builders; Ender Reed, Texas Association of Counties; Chet Morrison, Texas Association of Property Tax Professionals; Steven Garza, Texas Association of REALTORS; Amy Beneski, Texas Association of School Administrators; Dominic Giarratani, Texas Association of School Boards; Gardner Pate, Texas Building Owners and Managers Association; Justin Bragiel, Texas Hotel and Lodging Association; Shanna Igo, Texas Municipal League; Daniel Casey, Texas School Alliance; John Kennedy, Texas Taxpayers and Research Association; Neal "Buddy" Jones, Western Refinery)

Against — None

On — Dick Lavine, Center for Public Policy Priorities; (*Registered, but did not testify*: Mike Esparza and Laurie Mann, Texas Comptroller of Public Accounts)

BACKGROUND: Texas Constitution, Art. 8, sec. 1 requires that taxation be equal and uniform.

Under Tax Code, sec. 41.43, a protest on the ground of unequal appraisal of property is determined in favor of the protester, except under certain circumstances, including if the appraisal district can demonstrate that the property's appraised value is not greater than the median appraised value of a reasonable number of comparable properties appropriately adjusted.

In providing a remedy for an unequal appraisal, Tax Code, sec. 42.26 requires the district court to grant relief if the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.

DIGEST:

CSHB 2083 would require the use of generally accepted appraisal methods and techniques in appeals on the basis that the appraised value was higher than the median appraised value of a reasonable number of comparable properties appropriately adjusted. The bill would require that the selection of comparable properties and the application of adjustments made to the appraised value of a property be based on generally accepted appraisal methods.

The bill also would allow properties in other counties to be used in the appraisal appeal process if a there were not a sufficient number of comparable properties in the county.

This bill would take effect January 1, 2016.

SUPPORTERS SAY:

CSHB 2083 would be an important step toward a more consistent, fair, and transparent property appraisal appeal process. The term "generally accepted appraisal techniques" is well understood in the industry and is taught by multiple licensing and professional organizations.

In fact, the state already requires the use of generally accepted appraisal techniques in certain appeals of appraised value but not in appeals made on the basis that the property was appraised above the median value of other properties. This was an unintended oversight that is being used by property owners to appeal using comparable properties with appraised values that are not based on generally accepted appraisal techniques, thus skewing appraisal values downward. This would be a way that the district could challenge comparable property appraisals submitted by an appellant.

Higher evidentiary standards are good for the appeals process, and they could benefit the taxpayer. The deck is already stacked against the appraisal district, which makes appraisal districts across the state lose out on millions of dollars in potential tax revenue when appeals begin to skew property values downward. The Legislature should rectify this unintended consequence and level the playing field.

OPPONENTS SAY:

CSHB 2083 would be a step forward in some respects, but ultimately falls short and contains language that could exacerbate property undervaluation. The bill explicitly would allow appellants to base their appeals on properties outside the county. However, county appraisal districts do not have data on properties outside the county, which would create an imbalance during litigation.

The bill also would not go far enough. Several issues with the appraisal appeal process create a "race to the bottom" effect. Although not requiring appellants to adhere to generally accepted appraisal practices is one of the issues, the Legislature should address all of the relevant causes.

NOTES:

The Legislative Budget Board's fiscal note estimates that the higher evidentiary standard that would be required in property tax appraisals could mean that fewer unequal appraisal protests or appeals would be determined in favor of the taxpayer, which could result in a gain to the state through the operation of the school funding formula. The proposed use of comparable properties in counties other than in the county in which the property was located could mean more unequal appraisal protests or appeals would be determined in favor of the taxpayer. This could result in a loss to local taxing units and to the state through the operation of the school funding formula.

The Senate companion bill, SB 773 by Hancock, was heard in the Senate Finance Committee on April 7 and left pending.

SUBJECT: Enrollment in deferred compensation plans for hospital district employees

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 7 ayes — Coleman, Farias, Burrows, Romero, Schubert, Spitzer, Wu

1 nay — Tinderholt

1 absent — Stickland

WITNESSES: For — (*Registered, but did not testify*: Cynthia Cole, American Federation of State, County, and Municipal Employees Texas 1550; Donna Warndof, Harris County; Maureen Milligan, Teaching Hospitals of Texas; Jennifer Banda, Texas Hospital Association; Don McBeath, Texas Organization of Rural and Community Hospitals)

Against — None

On — Diane Poirot, Harris County Hospital District

BACKGROUND: Government Code, ch. 609, subch. B governs deferred compensation plans for employees of political subdivisions.

DIGEST: CSHB 2068 would amend Government Code, ch. 609 to allow certain hospital districts to automatically enroll employees in a deferred compensation plan. The bill would apply only to a district established under general or special law that chose to offer a deferred compensation plan to its employees under Government Code, ch. 609, subch. B. It would apply only to employees whose employers offered such a plan. The bill would not require a hospital district to establish a deferred compensation plan and would not require an employee to participate in a plan.

Employee rights and contribution. An employee in a hospital district that offered a deferred compensation plan would be enrolled automatically in the plan unless the employee opted out. After enrollment, the employee would contribute by automatic payroll deduction 1 percent of his or her

compensation to a default investment product selected by the plan administrator from an approved vendor.

In accordance with rules adopted by the board of the hospital district, the bill would permit an employee to:

- end participation in the plan;
- contribute to a different investment product;
- contribute a different amount to the plan; or
- designate all or a portion of the employee's contribution as a Roth contribution, if a Roth contribution program were available.

District authority and obligations. A district offering a deferred compensation plan would be required to inform an employee at the time of hiring of the employee's options with the plan, including the employee's responsibility for monitoring the plan and the fact that the district assumes no liability for any loss of value in the employee's investment.

The district would be required to use existing resources to inform a new employee during the orientation process of the employee's automatic enrollment in the deferred compensation plan and right to opt out. The district would be required to keep a record of the employee's acknowledgement that the employee received the information about the opt-out provision.

The board of directors for a hospital district would be required to adopt the necessary rules and ensure that the operation of the plan conformed with federal requirements.

CSHB 2068 would allow the district discretion to transfer deferred amounts and investment income from a qualified investment product to the deferred compensation plan's trust fund if the district determined the transfer was in the best interest of the plan and the employee. The bill would not require the district to give notice of the transfer before it occurred, but would require the district after the transfer to state the reason for the transfer and request that the employee designate another qualified investment product to receive the transferred amount.

As an alternative to transferring money to the deferred compensation plan's trust fund, the bill also would allow a district to invest the deferred amounts and investment income into a qualified investment product specifically designated by the district for that purpose.

This bill would allow a district to contract with entities for necessary goods and services related to the deferred compensation plan. It also could provide for periodic audits of the entities providing these services. The audit could cover proper handling and accounting of funds and other matters related to the proper performance of the contract. The district could contract with a private entity to conduct the audit.

This bill would specify that any amount deducted from an employee's compensation for a deferred compensation plan was not deducted for a payment of a debt and that the automatic payroll deduction was not a garnishment or assignment of wages.

Automatic participation in deferred compensation plans would apply only for employees hired on or after January 1, 2016.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 2068 would expand participation in deferred compensation plans offered by hospital districts and streamline the process of saving for retirement for hospital district employees. Most state government workers already are subject to automatic enrollment, so this bill simply would bring hospital districts in line with other government entities.

While participation in the deferred compensation plan would be automatic, it would not be mandatory. Employees could opt out of the plan at any time and could choose not to have any of their paycheck go to a compensation plan. Employees would be empowered to decide which approach was right for them, including how much money to put into the plan and what type of plan they wanted to join. At a default 1 percent deduction rate, hospital district employees would not be overburdened and could benefit from this vehicle to increase their personal savings.

Automatic enrollment also has been shown to dramatically increase participation among women, minorities, young workers, and moderate-income employees, helping ensure these employees are also preparing for their retirement.

OPPONENTS SAY:

CSHB 2068 inappropriately would place the burden on employees to opt out of deferred compensation plans. Employees who need an entire paycheck to pay for necessities such as housing and food might choose not to contribute to a deferred compensation plan. When not automatically enrolled, fewer employees participate in these plans, which might reflect an individual choice. Employees should have the freedom to choose whether to participate.

NOTES:

The companion bill, SB 640 by Garcia, was considered in a public hearing by the Senate State Affairs Committee on April 23.

SUBJECT: Providing homestead exemptions to a surviving spouse with a life estate

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Parker, Springer, C. Turner, Wray

0 nays

WITNESSES: For — (*Registered, but did not testify*: Daniel Gonzalez, Texas Association of Realtors)

Against — None

BACKGROUND: A life estate is a legal concept in which property is given to a third party, but assigned to a "life tenant," who retains most rights and duties relating to the property, including the payment of property taxes and upkeep of the structures. Under the terms of most life estates, all rights to the property are granted to the third party upon the death of the life tenant.

Tax Code, sec. 11.13 (j)(1) provides several requirements for a property to be considered a residence homestead. Specifically, a structure on the property must be:

- owned by one or more individuals, either directly or through a beneficial interest in a qualifying trust;
- designed or adapted for human residence and used as a residence; and
- occupied as the individual's principal residence by an owner or, for property owned through a beneficial interest in a qualifying trust, by a trustor or beneficiary of the trust who qualifies for the exemption.

DIGEST: HB 1022 would expand the definition of a residence homestead to include residences occupied by an owner's surviving spouse who held a life estate in the property.

This bill would take effect January 1, 2016, and would apply only to a tax year that began on or after that date.

SUPPORTERS SAY:

HB 1022 would clarify that a homestead exemption transferred to the surviving spouse in the event that the residence was in a life estate. Current law grants surviving spouses of totally disabled veterans a homestead exemption for the entire value of the residence but does not mention life estates. Because of this, a minority of appraisal districts do not transfer the homestead exemption to the surviving spouse of a disabled veteran if the residence is owned through a life estate, because ownership of the life estate is shared in some respects with a third party ineligible for the exemption. However, the life tenant is responsible for the payment of property taxes.

Life tenants often assume a number of costs associated with the death of their spouses, including funeral costs and a loss of income. They should not also face a tax increase because of the death of their spouse, as some life tenants do because of the lack of clarity in current law about their rights to the homestead exemption.

Because current law is interpreted differently by some appraisal districts, similar situations are treated differently. This bill would create a uniform approach across the state. In many appraisal districts, it is common practice to transfer to surviving spouses who are life tenants exemptions that would transfer to surviving spouses who were actual owners. As a result, this bill would affect only a few districts, so any cost to the Foundation School Fund would be minimal but would have an important impact on those who qualified for the exemption.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The Legislative Budget Board’s fiscal note indicates that additional homestead exemptions provided under this bill would create a cost to the Foundation School Fund, but that the cost could not be estimated because the number of surviving spouses who would qualify is unknown.

SUBJECT: Requiring alcoholic beverage providers to carry liability insurance

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Smith, Gutierrez, Goldman, Kuempel, Miles, D. Miller

0 nays

3 absent — Geren, Guillen, S. Thompson

WITNESSES: For — Bill Lewis, Mothers Against Drunk Driving; Angela Ward; (*Registered, but did not testify*: Lee Loftis, Independent Insurance Agents of Texas; Ware Wendell, Texas Watch; Greg Vanek)

Against — None

On — Amy Harrison, Texas Alcoholic Beverage Commission

BACKGROUND: Alcoholic Beverage Code, sec. 2.02 creates a statutory cause of action against a provider of alcoholic beverages on proof that:

- at the time the provider sold or served the alcohol, it was apparent to the provider that the recipient was obviously intoxicated to the extent that he presented a clear danger to himself and others; and
- the intoxication of the recipient proximately caused the damages suffered.

Under sec. 106.14, owners of businesses that provide alcoholic beverages can avoid liability for their employees' actions if:

- the employer required its employees to attend a seller training program approved by the Texas Alcoholic Beverage Commission (TABC);
- the employee actually attended the program; and
- the employer did not directly or indirectly encourage the employee to violate the law.

Civil Practice and Remedies Code, sec. 101.023 establishes a limitation of liability for governmental units. These include:

- for the state government or a municipality, liability limitations of $250,000 for each person, $500,000 for each single occurrence of bodily injury or death, and $100,000 for each single occurrence of injury to or destruction of property; and
- for a unit of local government or an emergency service organization (except a volunteer fire department), liability limitations of $100,000 for each person, $300,000 for each single occurrence of bodily injury or death, and $100,000 for each single occurrence of injury to or destruction of property.

DIGEST:

CSHB 409 would prohibit a person from holding a permit to sell alcoholic beverages for on-premises consumption unless the person established financial responsibility by either maintaining a liability insurance policy or filing a bond with the Texas Alcoholic Beverage Commission (TABC).

A liability insurance policy under this bill would have to be issued by an insurance company that was authorized to write liability insurance in Texas or was an eligible surplus lines insurer and that would pay for damages arising out of the sale or service of alcoholic beverages. The commission would be required to adopt rules that established:

- minimum amounts of required insurance coverage at $500,000 for each occurrence and $1 million for any annual aggregate limit;
- the method for filing proof of insurance with and obtaining approval of the commission; and
- the method for verification of a permit holder's continued maintenance of the required insurance coverage.

The minimum amount of insurance coverage required for governmental units would be the amounts of the liability limits applicable to the government unit under Civil Practice and Remedies Code, sec. 101.023.

A person who bought or consumed an alcoholic beverage from a permit holder could not recover damages arising out of the sale or service of the beverage from the proceeds of a permit holder's insurance policy if, at the time of sale or service, the person was obviously intoxicated or a minor.

In lieu of maintaining an insurance policy, permit holders and applicants for permits could file with the TABC a bond that:

- had at least two individual sureties, each of whom owned real property in the state that was not exempt from execution;
- was conditioned for payment in the same amounts as the liability insurance policy;
- was not cancelable before the sixth day after the date the commission received written notice of the cancellation;
- was accompanied by a fee prescribed by the commission; and
- was approved by the commission.

The real property required for the bond would be required to be certified by an assessor-collector to be free of any tax lien, and the sureties' equity in the property would be required to be at least twice the amount of the bond. The bond would be a lien in favor of the state and in favor of a person who held final judgment against the person who filed the bond. The commission would issue a certificate of compliance with the requirements of this bill upon filing of the bond and would file notice with the county clerk of the county where the property was located.

A judgment creditor could bring an action for foreclosure against the sureties if a judgment was not satisfied within 61 days after final judgment. Cancellation of the bond would not prevent recovery for a right or cause of action arising before cancellation.

The TABC would be required to adopt any rules necessary to implement the changes made by this bill by December 31, 2015.

The bill would take effect September 1, 2015, and would apply to people who held or applied for permits to sell alcoholic beverages on or after January 1, 2016.

SUPPORTERS SAY:

CSHB 409 would help ensure that victims of drunk-driving accidents were properly compensated for their losses. Under current law, victims are able to sue bars that serve alcohol to overly intoxicated people who go on to injure others, but if the bars are not properly insured, the victims might be unable to adequately recover their damages. This bill will ensure that all bar owners carried sufficient insurance to reimburse any potential victims for damages they could sustain.

This bill would help reduce the number of motor vehicle accidents related to driving under the influence (DUI). Bars that were required to buy insurance would have an incentive to reduce insurance premiums by adequately training their employees not to over-serve patrons and by implementing measures to ensure that patrons did not drive after consuming alcohol.

The minimum amount of insurance coverage required by this bill would not be excessive, given the tremendous potential for loss from drunk-driving incidents. The required coverage also would protect bar owners from being shut down by bankruptcy in the event of a lawsuit. The cost of the insurance premiums would be minor when compared to the massive costs of a drunk-driving accident.

It is unlikely that the prohibition against intoxicated persons or minors recovering damages from insurance policies under this bill would create increased uncovered liability for bar owners. Under Civil Practice and Remedies Code, ch. 33, a claimant may not recover damages if his percentage of responsibility is greater than 50 percent. The recipient of alcohol under such circumstances generally would be found to have borne more than 50 percent of the responsibility for any incident, in which case the patron would be barred from recovery and probably could not sustain a lawsuit against a bar for its negligence in over-serving the drunk or underage patron.

OPPONENTS SAY:

CSHB 409 could create a gap in insurance coverage for bar owners. Under current law, bar owners can purchase insurance policies that protect them against lawsuits by patrons who are injured as a result of being served too much alcohol. This bill would prevent patrons in those incidents from recovering damages from insurance policies, so they instead could seek to recover damages directly from the bar owner. This issue could be remedied by either allowing patrons to recover from insurance or by creating a corresponding limitation of liability for bar owners against intoxicated persons and minors who were injured as a result of their overconsumption at the bar.

The insurance premiums that bars would be required to pay would be excessively high for many to stay in business, particularly small bars.

Under the bill, small bars that had never had a problem with DUI-related incidents could have to pay excessive insurance premiums when a lower amount of coverage probably would suit their needs.

SUBJECT: Requiring campus sexual assault policies at higher education institutions

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Zerwas, Howard, Clardy, Crownover, Martinez, Morrison, Raney, C. Turner

0 nays

1 absent — Alonzo

WITNESSES: For — Chris Kaiser, Texas Association Against Sexual Assault; (*Registered, but did not testify*: Ted Melina Raab, Texas AFT (American Federation of Teachers); Casey Smith, United Ways of Texas; Julie Bassett

Against — None

DIGEST: CSHB 699 would require all public institutions of higher education in Texas to adopt, promote, and review individual policies on campus sexual assault. Each institution's campus sexual assault policy would have to include definitions of prohibited behavior, punishments for violating the policy, and a protocol for reporting and responding to reports of campus sexual assault. Institutions' governing boards would be required to approve these policies before they were adopted by the school.

Under CSHB 699, every institution would need to make its campus sexual assault policy available to students, staff, and faculty by including the policy in its student handbook and personnel handbook and by creating and maintaining a webpage dedicated to the policy on the school's website. Institutions would be required to review their policies every two years and could revise them as necessary with approval from the institutions' governing boards.

CSHB 699 also would require freshmen at each institution to attend an orientation on the school's campus sexual assault policy either before or during the first semester or term in which the student was enrolled. Each

institution would establish the format and content of this orientation.

The bill would take effect September 1, 2015, and would apply beginning with the fall 2015 semester.

SUPPORTERS SAY:

CSHB 699 would help protect students against sexual assault by increasing awareness of this important subject on campus. A large number of students will become victims of sexual assault during their academic careers, yet many victims on college campuses do not report their assaults to law enforcement. This bill would empower more students to come forward if an attack did occur by helping them understand and exercise their rights. Campus sexual assault is a problem that affects students everywhere, and CSHB 699 is a timely bill that would help address many issues that have come to light in the reporting of recent incidents across the country.

While some federal protections exist for campus assault, CSHB 699 would address certain inadequacies. Although the federal Clery Act requires college campuses to address campus safety by adopting policies and procedures for crimes that occur on campus, these policies can be hard to access, and they may slip out of date because they are not required to be updated frequently. In addition, Title IX offers some protection against sexual assault, but it frames the issue more in the context of sexual harassment or discrimination, which might not directly apply to a student seeking information or help regarding assault on campus.

CSHB 699 would help fill some of these gaps by requiring regular review of campus policies, which would allow them to better reflect changes in culture on campuses and nationally. It also would provide clear guidance for the contents of campus sexual assault policies, which would be required to clearly state definitions, consequences, and reporting procedures. Finally, the bill would increase awareness by requiring institutions to place their campus sexual assault policies prominently on a webpage dedicated for this purpose, providing a convenient resource that would spare students from the need to sift through various federal laws.

This bill would not create a burden for schools because higher education institutions already must comply with the Clery Act, and the additional

requirements of the bill would be minimal. The cost to schools under CSHB 699 also would not be significant. The bill would provide enough flexibility to allow institutions or university systems to develop policies that work best for their campuses, rather than forcing a one-size-fits-all approach. While the bill might not provide as many protections as some might hope, it would be a good start toward creating an environment on campus designed to reduce and prevent sexual assault.

OPPONENTS SAY:

CSHB 699 would place an additional administrative burden on colleges and universities, which often have their own policies on top of several frequently changing federal policies that also must be followed. Keeping up with the Clery Act and other federal requirements is already burdensome, and adding a mandate for institutions to expand their policies or alter existing practices could be difficult and costly, especially at smaller schools where faculty and staff already juggle multiple roles and responsibilities.

OTHER OPPONENTS SAY:

CSHB 699 would not go far enough to protect students. The bill should require the involvement of essential stakeholders — such as law enforcement, medical providers, Title IX investigators, legal advocates, and institutional partners — in the development of campus sexual assault policies. The bill also should protect students who might be reluctant to report sexual assault if it were connected with the violation of another, less serious campus policy, such as rules against drinking or other activities. Additionally, CSHB 699 should prescribe sanctions for schools that fail to comply with this legislation.

While increasing oversight of campus sexual assault policies is a good idea, requiring the governing board of each institution to approve the policy might create a barrier to implementation. It would be administratively more efficient to craft these policies with each board's advice and input and then seek approval from a more appropriate body on campus, such as the office of student affairs.

SUBJECT: Creating a civil penalty for surcharges on debit and stored-value cards

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 6 ayes — Parker, Longoria, Capriglione, Flynn, Pickett, Stephenson

0 nays

1 absent — Landgraf

WITNESSES: For — Stephen Scurlock, Independent Bankers Association of Texas; (*Registered, but did not testify*: Melodie Durst, Credit Union Coalition of Texas; Jeff Huffman, Texas Credit Union Association)

Against — None

On — Ronnie Volkening, Texas Retailers Association

BACKGROUND: HB 3068 by Menéndez, enacted by the 83rd Legislature in 2013, amended Finance Code, ch. 59 to prohibit merchants from adding a surcharge to purchases made with a debit or a stored-value card.

DIGEST: CSHB 3619 would transfer Finance Code, ch. 59, subch. E, which prohibits surcharges on debit and stored-value cards, to Business and Commerce Code, ch. 604A and would add an enforcement mechanism to the prohibition.

The bill would define a surcharge as an increase in the price charged for a buyer who paid with a debit or stored-value card that was not imposed on a buyer who paid by other means.

If the attorney general had reason to believe that someone had been imposing surcharges for goods or services paid for with a debit or stored-value card, the attorney general would be required to send a warning letter to that person. The letter would have to advise the person about the requirements of the surcharge prohibition, provide guidance to assist the violator on how to become compliant, and state that the person could be

liable for a civil penalty for subsequent violations. The attorney general could not send more than one letter for each day on which the attorney general believed the person had imposed a prohibited surcharge.

A person who violated the surcharge prohibition after receiving a warning letter for a previous alleged violation would be liable for a civil penalty not to exceed $250 for each violation that occurred after receiving the letter. The attorney general or the prosecutor in the county where the violation occurred could bring an action to recover the penalty or seek an injunction for a violation. They also could recover reasonable expenses incurred in obtaining penalties or seeking injunctive relief.

The bill would take effect September 1, 2015, and would apply only to the sale of goods or services occurring on or after that date.

SUPPORTERS SAY:

HB 3619 would ensure that merchants complied with current law's prohibition on debit and stored-value card surcharges while providing merchants who might be unclear on the law with guidance on how to comply. The original prohibition on debit cards was meant to protect consumers from unexpected fees. Despite efforts by the Texas Department of Banking to educate the business community on the prohibition against surcharges, some businesses continue to impose surcharges on purchases made with debit and stored-value cards. The Department of Banking has received numerous complaints from consumers who discovered surcharges on their bank statements, but because these surcharges are typically 50 cents or less, it is hard to estimate how many surcharges go unnoticed.

The bill would protect small businesses. The attorney general or prosecuting attorney would be required to provide a warning letter for a violation before seeking fines or an injunction for a violation that occurred after the notice. This letter would provide guidance for merchants who simply were unaware of the law, and the penalty imposed for subsequent violations would be moderate.

OPPONENTS SAY:

While CSHB 3619 might contain comparatively light penalties for surcharge violations, it still would place small business owners at risk of facing substantial fines out of proportion to the problem this bill seeks to

address.

Most businesses are compliant with the prohibition on surcharges. In fact, large businesses have in-house counsel to ensure their practices are in compliance with the law. The businesses that do impose debit and stored-value card surcharges are those that receive most of their revenue from small purchases and are recovering costs they incur from interchange fees. Banks that provide debit and stored-value cards typically charge merchants an interchange fee of 22 cents plus 0.5 percent of the purchase price for every transaction. For businesses that depend on small purchases for the bulk of their revenue, such as convenience stores, these fees can have a significant impact on the business's profit margin.

Some businesses that impose a surcharge on debit card transactions are small businesses that are trying to create a discount for paying with cash but are unclear on the law. For this reason, HB 3619 at least should provide explicit language allowing discounts for paying with cash.

NOTES:

CSHB 3442 by Raney, a similar bill, also would add an enforcement mechanism to the prohibition against imposing surcharges on a debit or stored-value card purchase. It would provide a one-month grace period for merchants to cure noncompliance and would create a $1,000 penalty for violations of the prohibition against surcharges. CSHB 3442 was placed on the general state calendar on April 23 and postponed until April 30.

SUBJECT: Amending state responses to children missing during DFPS investigations

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 6 ayes — Dutton, Riddle, Peña, Rose, Sanford, J. White

0 nays

1 absent — Hughes

WITNESSES: For — Brian Manley, Austin Police Department; Katherine McAnally, Burnet County Attorney's Office; Bill Gravell, Justice of the Peace and Constables Association of Texas; Alicia Hill, Love, Colton Foundation; Donald "Chris" White, Milam County Sheriff's Office; Robert Chody, Williamson County Constable; Raquel Helfrich, Colton's family; Liz St. Clair; (*Registered, but did not testify*: Sarah Crockett, Texas CASA; Kyle Ward, Texas PTA; Casey Smith, United Ways of Texas; and 16 individuals)

Against — Isaac Sommers, Texas Home School Coalition Association

On — Angela Goodwin, Department of Family and Protective Services; (*Registered, but did not testify*: Derek Prestridge, Texas Department of Safety)

BACKGROUND: Investigations of reports of child abuse and neglect are conducted in accordance with Family Code, ch. 261, which provides the powers and duties of certain child welfare and law enforcement agencies when conducting these investigations.

Sec. 261.301 requires the Department of Family and Protective Services (DFPS) to conduct a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for the child's care, custody, or welfare.

If DFPS cannot locate the child or the family of a child who is the subject of a report being investigated, the agency — after exhausting all available

means — may initiate a process to receive a court order to place the family members on the Texas Crime Information Center's child safety check alert list. According to sec. 261.3022, DFPS may request assistance from the county attorney, district attorney, or criminal district attorney, who may then file an application to request the issuance of an order for local law enforcement to place the family on the child safety check alert list.

Section 262.3023 allows a law enforcement officer who locates the missing family or child to remove the child from the family, if certain conditions exist. If these conditions do not exist, the officers must obtain the child's address and other relevant information and report it to DFPS.

DIGEST:

HB 2053 would amend the procedures for child abuse and neglect investigations during which the child or the child's family is missing.

The Department of Family and Protective Services (DFPS) would have to report to the Department of Public Safety (DPS) when DFPS was unable to locate the child or family during abuse and neglect investigations that were assigned the highest priority. DPS then would be required to conduct an investigation to find the child and family using all available resources, including the child safety check alert list of the Texas Crime Information Center (TCIC).

The bill would eliminate the process in current statute that requires a court to order local law enforcement to place a family under investigation on TCIC's alert list. Instead, the bill would require DPS, upon receiving notice from DFPS, to notify TCIC to place the child and the child's family on the alert list.

HB 2053 also would require additional information, if it was available, to be included on the TCIC child safety check alert list, including:

- physical descriptions of the child and the family member alleged to have abused or neglected the child and a description of the motor vehicle suspected of transporting the child;
- the DFPS case number and a telephone number for the employee responsible for the investigation; and

- the location, date, and time when the child was last seen.

The bill would expand the duties of law enforcement officers who encountered a child or a family on the alert list. The officers would be required to:

- immediately detain all individuals on the alert list who were present;
- take temporary custody of the child who was the subject of the alert;
- take investigative detention of all motor vehicles in the alert list;
- notify DFPS of the location of the individuals detained; and
- remain at the location of initial contact with the detained persons for up to six hours until DFPS was able to respond to the location.

If DFPS was unable to respond within six hours, the law enforcement officers would have to release the individuals and vehicles after obtaining the child's address and any other relevant information, which then would be reported to DFPS. Law enforcement would be required to report to TCIC that the child had been located.

The bill would specify that the requirement to detain an individual or motor vehicle would not preclude the enforcement of other state or federal laws.

HB 2053 would take effect September 1, 2015.

SUPPORTERS SAY:

HB 2053 would help prevent tragedies that occur when children and their families go missing during Department of Family and Protective Services (DFPS) investigations of abuse and neglect. The bill would be called "Colton's Law," in honor of a young boy in Texas who died when he and his family went missing while under investigation by DFPS.

The bill would require DFPS, under certain circumstances, to notify the Department of Public Safety (DPS) when DFPS could not locate the child or the family of a child who was the subject of an abuse or neglect report. This would help DFPS workers focus on the families they could serve, rather than using time and resources to find families who are missing —

many of whom are evading the agency. The bill would ensure that DPS received information about missing families only when the reports were of the highest priority and when DFPS had exhausted all means to locate the families themselves.

Under current law, placing a child on TCIC's child safety check alert list can take months. Eliminating the need to go through a court to place a child on the alert list would expedite and streamline the process of information sharing across agencies.

Law enforcement would be aware that these highest-priority families were being sought, resulting in the direction of more attention and resources toward finding these children. Many children and families that go missing under DFPS investigation currently are not placed on the alert list because of how long it can take, which can endanger these children. The gravity of these cases and the need to find families quickly outweighs the concerns that removing the court's oversight would weaken due process.

HB 2053 would require additional details to be included on the child safety check alert list to help law enforcement more easily recognize missing families and their vehicles. The bill also would require DFPS case information to be included on the alert list, which would help bridge the work of DFPS and DPS. This additional information for the alert list would be used only for investigative purposes. It would not have any criminal implications for individuals on the list.

The bill would remove jurisdictional obstacles to helping children by allowing DFPS to alert DPS directly about missing families. This would expedite the submission of information about missing families to TCIC's alert list, which enables any law enforcement officer to intervene if contact is made with the child or the child's family.

OPPONENTS SAY:

HB 2053 has good intentions, but its implementation might not serve its intended purpose of protecting more children. Current law provides processes that would have protected someone in Colton's situation, and agencies should be educated on existing policies so people know and can follow the systems already are in place.

HB 2053 could create new cracks in the system by requiring DFPS to report directly to DPS when a family could not be found and by requiring DPS, rather than local law enforcement, to submit information to TCIC. This could delay the notice to local law enforcement agencies and hinder their ability to find the missing child or family.

HB 2053's elimination of the court process would remove a level of oversight and due process needed to protect innocent families and state resources. The bill should define what DFPS would have to do before it could reach out to DPS and place a family on the alert list. It would cast a broad net that could ensnare some innocent families, including those who might be on an extended trip while under DFPS investigation. The court process required under current law helps ensure the proper use of law enforcement's resources and the TCIC system.

Including detailed information, such as on a car in which the child might be transported, could raise privacy concerns. The detention policies could be misused if law enforcement used the time to ferret out more information. Current case law limits the time a person may be detained before constitutional rights are infringed upon, and the six hours allowed might not be sufficient. Detentions need a basis, and families under DFPS investigation have not been found conclusively to have neglected or abused their children. Current statute respects limits on detentions by requiring law enforcement to release the children and families unless there are specific grounds for immediate removal of the child.

HB 2053 could drain DPS manpower to help find these children when the agency has competing duties. Adding families to the child safety check alert list could give DPS new responsibilities that might be difficult to manage. The bill's requirement that DPS hold families or children for up to six hours could occupy the officers' time and attention at the expense of other duties. It also could be unsafe if it forced individuals to remain on the side of the road or kept officers with a family in a tense or dangerous situation for a long period. The bill should require a shorter response time from DFPS, especially in light of the high priority of these cases.

NOTES: According to the Legislative Budget Board's fiscal note, the bill would have an estimated negative net impact of $3.2 million to general revenue

through fiscal 2016-17 due to the need for additional DPS resources.

SUBJECT: Adding drive to emergency under first responders' scope of employment

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba

0 nays

WITNESSES: For — Ryan Hudson, Leander VFD and State Firefighters and Fire Marshalls Association; A.R. Babe Schwartz, VFIS; Barbara Marzean, VFIS of Texas and volunteer emergency responders of Texas; (*Registered, but did not testify*: David Crow, Arlington Professional Fire Fighters; Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Lee Loftis, Independent Insurance Agents of Texas; Mark Mendez, Tarrant County Fire Marshall; Jo Betsy Norton, Texas Mutual Ins. Co.; Glenn Deshields, Texas State Association of Fire Fighters; Stephanie Dew, Ted Regnier, VFIS of Texas)

Against — David Reagan, Texas Municipal League Intergovernmental Risk Pool; (*Registered, but did not testify*: Paul Sugg, Texas Association of Counties Risk Management Pool)

On — (*Registered, but did not testify*: Brent Hatch, Texas Department of Insurance, Division of Workers' Compensation)

BACKGROUND: The Texas Workers' Compensation Act (Labor Code, ch. 401) defines "course and scope of employment" as an activity that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the employer's business or affairs.

Under Labor Code, sec. 406.031, an insurance carrier is liable to compensate an employee subject to the Texas Workers' Compensation Act for an injury that arises out of and in the course and scope of that person's employment.

DIGEST: CSHB 2771 would include the travel of firefighters and emergency

medical personnel en route to an emergency in the course and scope of their employment under the Texas Workers' Compensation Act.

This bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 2771 would ensure that firefighters and emergency medical personnel who responded to emergencies in personal vehicles were covered by the Workers' Compensation Act. Due to the dangerous nature of their positions in responding quickly to emergencies, driving to an emergency call should be considered within the course and scope of their employment as an exception to the general rule that holds transportation to and from work outside the course and scope of employment. Driving under these circumstances poses greater risk to a fireman or to emergency medical personnel than the risks that other drivers on the road face. Current law is not broad enough to address this increased risk imposed by the job.

This bill would not expand the Workers' Compensation Act beyond its intention to cover work-related injuries while an individual was on duty. Firefighters and emergency personnel who are on call may be required to drive to the scene of an emergency. Similarly, volunteer firefighters may be called upon to drive directly to an emergency in their own cars. After being notified to respond, these public servants are on duty while they are en route to the emergency in their own vehicles, and they should be covered in the same manner as other firefighters and emergency personnel responding directly from the station.

CSHB 2771 also would help with recruitment and retention of firemen and emergency medical personnel by providing them with more complete work injury protections.

OPPONENTS SAY:

CSHB 2771 inappropriately would amend the workers' compensation law, which is not intended to cover individuals who are driving to work. This action poses no greater risk to firefighters and emergency services personnel than the risks that all other drivers on the road face. The workers' compensation law is well settled in this area.

OTHER

CSHB 2711 is unnecessary because the current workers' compensation

OPPONENTS SAY:

law is already broad enough to cover many injuries suffered en route to an emergency, as decided on a case-by-case basis. Most large carriers already consider the drive en route to an emergency in a personal vehicle as within the course and scope of employment and already covered under the Workers' Compensation Act.